

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA
BUMPUS, RONALD BIENDSEIL, LESLIE W.
DAVIS, III, BRETT ECKSTEIN, GLORIA
ROGERS, RICHARD KRESBACH, ROCHELLE
MOORE, AMY RISSEEUW, JUDY ROBSON,
JEANNE SANCHEZ-BELL, CECELIA
SCHLIEPP, TRAVIS THYSSEN, CINDY
BARBERA, RON BOONE, VERA BOONE,
EVANJELINA CLEERMAN, SHEILA COCHRAN,
MAXINE HOUGH, CLARENCE JOHNSON,
RICHARD LANGE, and GLADYS MANZANET,

Plaintiffs,

Case No. 11-C-00562
JPS-DPW-RMD

TAMMY BALDWIN, GWENDOLYNNE MOORE
and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, and TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E.
PETRI, PAUL D. RYAN, JR., REID J. RIBBLE,
and SEAN P. DUFFY,

Intervenor-Defendants.

VOCES DE LA FRONTERA, INC.,
RAMIRO VARA, OLGA VARA,
JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Case No. 11-C-1011
JPS-DPW-RMD

Members of the Wisconsin Government
Accountability Board, each only in his official
capacity: MICHAEL BRENNAN, DAVID
DEININGER, GERALD NICHOL, THOMAS
CANE, THOMAS BARLAND, TIMOTHY
VOCKE, and KEVIN KENNEDY, Director and
General Counsel for the Wisconsin Government
Accountability Board,

Defendants.

DEFENDANTS' BRIEF REGARDING MAP ALTERNATIVES

NOW COME the defendants by their attorneys, J.B. Van Hollen, Attorney General, Maria S. Lazar, Assistant Attorney General, and Reinhart Boerner Van Deuren s.c., and pursuant to the Court's Order dated March 27, 2012, hereby file this Brief regarding alternatives for the configuration of Assembly Districts 8 and 9 within the boundaries of those districts as set forth in 2011 Wisconsin Act 43 ("Act 43").

Given the Court's directive to meet and confer with the plaintiffs, the defendants attempted to discuss a configuration for Assembly Districts 8 and 9 that could provide the basis for a remedy. Despite good faith efforts by the defendants, no such resolution was achieved.

When a court disallows all or part of a redistricting statute, the goal for the remedial phase of litigation is adopting a map that adheres as closely as possible to the Legislature's policy considerations. "[F]aced with the necessity of drawing district lines by judicial order, a

court, as a general rule, should be guided by the legislative policies underlying' a state plan—even one that was itself unenforceable—to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act.” *Perry v. Perez*, 555 U.S. ___, 132 S. Ct. 934, 941 (2012) (quoting *Abrams v. Johnson*, 521 U.S. 74, 79 (1997)).

The Legislature intended 2011 Wisconsin Act 43 to create one majority-minority Latino Assembly District and one district the Latino community would have a chance of winning in the next decade. Accordingly, pursuant to the directives of *Perry v. Perez*, that “a district court should take guidance from the State’s recently enacted plan in drafting an interim plan,” *id.*, the defendants have prepared two alternative map proposals which implement the relief that the Court has decided to enter, but which also attempt to adhere to the legislative intent evidenced in Act 43. Details and statistics for each of the two proposed maps follows.

Although defendants are offering maps for the Court’s consideration, they do not concede that 2011 Wisconsin Act 43 violates the Voting Rights Act and expressly reserve their right to challenge that portion of the Court’s decision on appeal.

ALTERNATIVE CONFIGURATIONS OF ASSEMBLY DISTRICTS 8 AND 9

Under Act 43, Assembly District 8 had an Hispanic Voting Age Population (“HVAP”) of 60.52% and Assembly District 9 had an HVAP of 54.0%. (Grofman Declaration at ¶ 17(d)). Thus, the Legislature, as part of its constitutional authority, used its judgment and determined that it would create one Latino majority-minority district and one Latino influence district. At that time, there was no legal directive that the Legislature create one single majority Latino Assembly District. That is not a requisite under the Voting Rights Act. *See Voinovich v. Quilter*, 507 U.S. 146, 155 (1993).

The HVAP of both Assembly Districts 8 and 9 were higher than those approved of in the 2002 redistricting plan imposed by this Court. At trial there was disputed testimony from experts as to the exact Citizen Voting Age Population (“CVAP”) percentages for the Act 43 Assembly Districts 8 and 9.¹ Regardless of which expert’s testimony was accepted, it is not disputed that the CVAPs for both Assembly Districts 8 and 9 were higher under Act 43 than under the 2002 plan.

1. MAP 1 (62.16% / 53.43% HVAP) [Attached as Exhibit 1/Map 1]

Map 1 adheres most closely to the Legislature’s policy judgment to increase the majority Hispanic voting age percentage over the 2002 Assembly District 8 map while creating a strong and growing Latino presence in Assembly District 9. In 2002, the Court drew Assembly District 8 with a HVAP percentage of 58.34%.² (Declaration of Bernard Grofman, dated January 11, 2012, at ¶ 18 [Trial Exhibit 1181]). That district has been continuously represented by a Latino Assembly representative from 2002 to present. (*Id.* at ¶ 18). Act 43 strengthened the Hispanic vote in Assembly District 8 by raising the HVAP to 60.52% while also increasing the HVAP in old Assembly District 9 from 22.94% to 54.0%. (*Id.* at ¶ 17(d)).

Map 1 further strengthens the Latino presence in Assembly District 8 by raising the HVAP to 62.16% in that district, while still retaining a strong presence in District 9. Depending on which calculation is used, Map 1 creates a Latino CVAP in District 8 of approximately

¹The CVAP for District 8 is between 49.6% and 47.07% under Act 43 compared to 40.9% under the 2002 plan. For Assembly District 9 the CVAP range is 43.02% to 40.52% as compared to 33.7% under the 2002 plan. (Corrected Rule 26 Expert Report of Dr. Kenneth R. Mayer, dated December 14, 2011, at 11 [Trial Exhibit 55]; Declaration and Expert Report of Peter A. Morrison, dated December 14, 2011, at ¶ 24 and Table 2 [Trial Exhibit 32]; and Rule 26 Expert Rebuttal Report of Dr. Kenneth R. Mayer, dated January 13, 2012, at 11 [Trial Exhibit 60]).

²The Court did not calculate the Citizen Voting Age Population (“CVAP”) for this district.

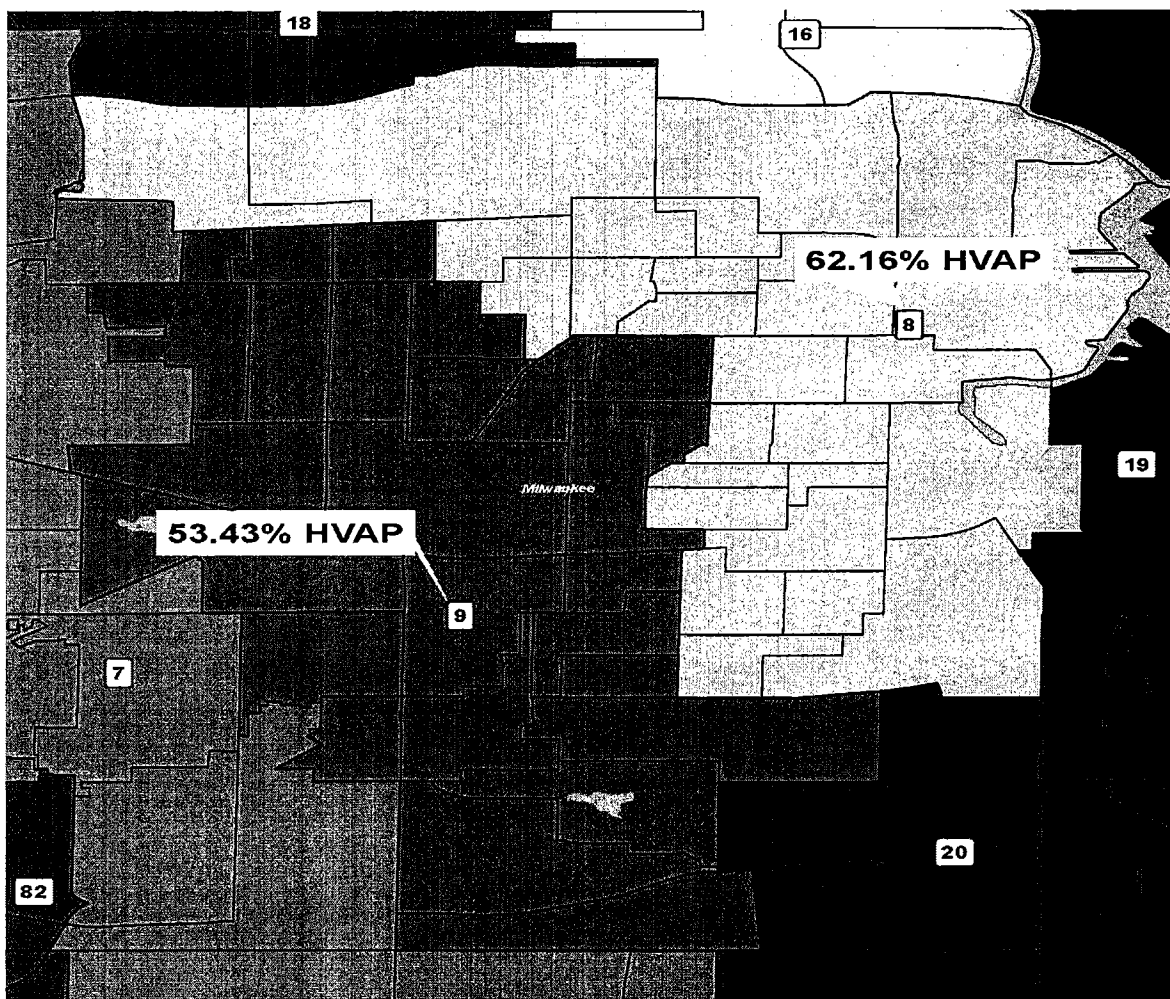
51.4%,³ which is a significant increase over the Act 43 Latino CVAP of between 40.9% and 49.6%. Although this increase comes at the cost of dropping the Latino CVAP in Assembly District 9 from 43.02% (in the Act 43 map) to 41.5%, it is the least disruptive alternative to the legislatively-adopted map.⁴

Map 1 also fares well under traditional redistricting principles. The map contains no ward splits, has a core retention of 68.7% for Assembly District 8,⁵ and a visual analysis confirms the two districts are reasonably compact. All in all, Map 1 takes into account the directions of the Court, minimizes the loss of influence in Assembly District 9, and stays within the general redistricting principles.

³Defendants do not concede that CVAP is the “relevant measure” for evaluating a district under the Voting Rights Act. By submitting this information, the defendants do not intend to waive their right to argue on appeal that the Court erred in concluding CVAP was the “relevant measure.” (Opinion at 24).

⁴In fact, given the range of CVAP for Assembly District 9, Map 1 actually increases the CVAP for that district.

⁵Although core retention is neither a constitutional nor statutory criterion, it can be useful in comparing the desirability of competing map proposals.



Map 1 reflects the following demographics:

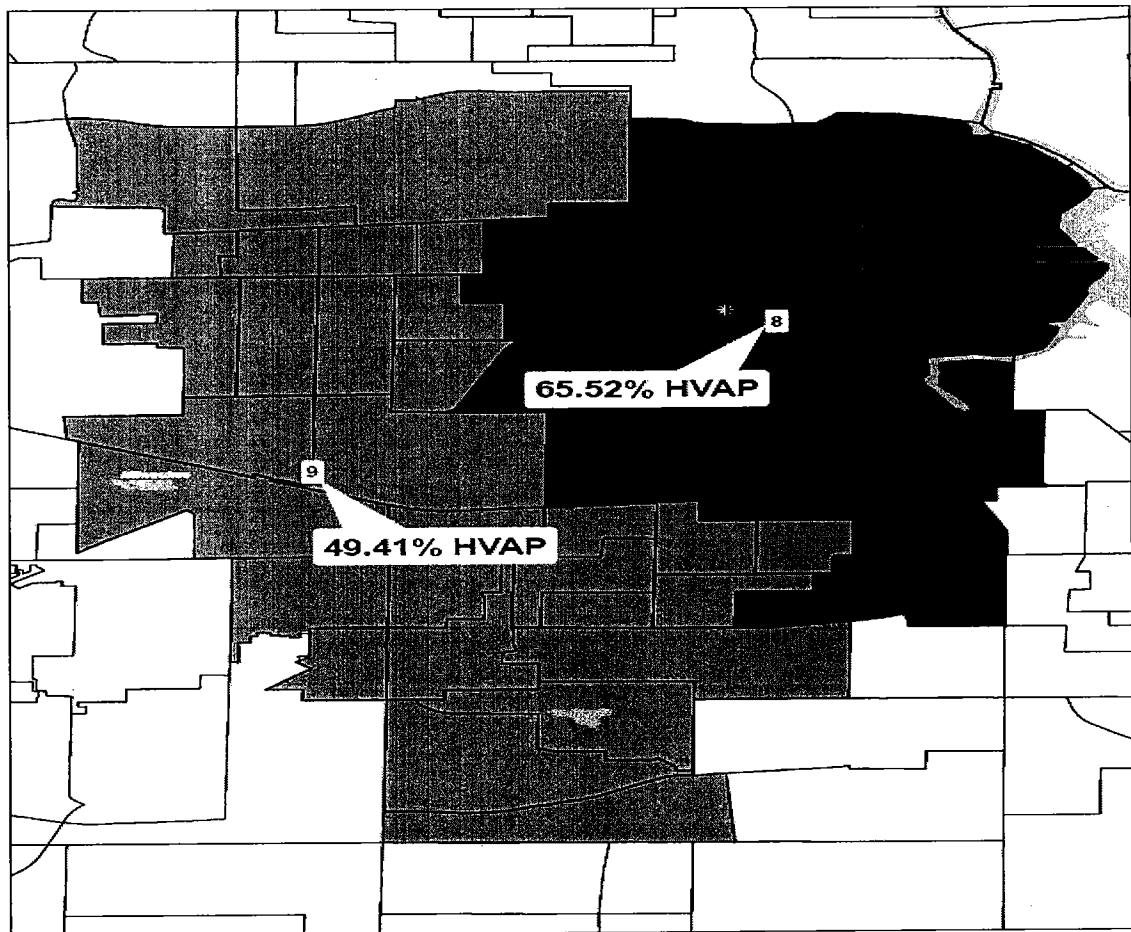
<u>Assembly District 8</u>		<u>Assembly District 9</u>	
HVAP	62.16%	HVAP	53.43%
CVAP	51.4%	CVAP	41.5%
Ideal Population:	57,444	Ideal Population:	57,444
Proposed Population:	57,333	Proposed Population:	57,146
Deviation	-111	Deviation	-298
Percent Deviation:	-.19%	Percent Deviation:	-.52%
Number of Ward Splits:		0	
Core Retention for Assembly District 8:		68.7%	

(See attached Exhibit 2, a copy of Dr. Peter Morrison's CVAP calculation for Map 1).

2. MAP 2 (65.52% / 49.41% HVAP) [Attached as Exhibit 3/Map 2]

Map 2 is yet another variation on the theme. The reason it may be preferable to the Court is that it has a higher HVAP (65.52%) and CVAP (55%) for Assembly District 8, while maintaining a high HVAP (49.41%) and CVAP (38.6%) for Assembly District 9. In addition, Map 2 splits only one ward.

Another factor in favor of Map 2 is that its shape is more in line with those proposed in Act 43. And, its core retention for Assembly District 8 is almost exactly the same as that proposed by the plaintiffs in their only map proposal defendants expect them to submit.



Map 2 reflects the following demographics:

<u>Assembly District 8</u>		<u>Assembly District 9</u>	
HVAP	65.52%	HVAP	49.41%
CVAP	55.0%	CVAP	38.6%
Ideal Population:	57,444	Ideal Population:	57,444
Proposed Population:	57,262	Proposed Population:	57,217
Deviation	-182	Deviation	-227
Percent Deviation:	-.32%	Percent Deviation:	-.40%
Number of Ward Splits:		1	
Core Retention for Assembly District 8:		70.08%	

(See attached Exhibit 4, a copy of Morrison's CVAP calculation for Map 2).

RECOMMENDATION

The defendant Government Accountability Board did not draw the boundaries in Act 43. However, when the plaintiffs sued the defendants, they defended the action in order to uphold the constitutionality and legality of Act 43. Nothing in this Brief waives the defendants' position in this litigation that Act 43 was constitutional and in compliance with the Voting Rights Act. Accordingly, other than to identify whether a particular map complies with the applicable constitutional and other legal requirements, the defendants do not take a position with respect to how the Court should create a new map for Assembly Districts 8 and 9 with the limited proviso: the new boundary line between the two districts should respect as much as possible the intent of the State Legislature as evidenced by Act 43.

Moreover, in the interest of providing this Court with a version of the selected map which comports with the legal requirements and has the necessary language regarding the included blocks and boundaries, the defendants request that the Legislative Technology Services Bureau (and in particular Tony Van Der Wielen who had served as special master and had assisted the

Court in 2002 to draw the approved maps) be allowed to take the selected map and “re-draw” it to insure that the final product meets the legal requirements for implementation as a statute and complies with other state laws (including 2011 Wisconsin Act 39).

In conclusion, this Brief and the maps addressed herein are being submitted with a full reservation of rights to appeal the Court’s decision regarding the legality of Assembly Districts 8 and 9 as created in 2011 Wisconsin Act 43. In particular, defendants continue to dispute the conclusion that Assembly Districts 8 and 9, as enacted in Act 43, violate the Voting Rights Act and further dispute the Court’s legal authority to redraw the boundary between those two districts. However, given that the Court has ruled on these matters and has requested input from the parties on specific relief, the defendants have submitted this Brief to assist the Court in the remedies phase of this litigation.

Dated this 3rd day of April, 2012.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

s/ Maria S. Lazar
MARIA S. LAZAR
Assistant Attorney General
State Bar #1017150

Attorneys for Defendants

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 267-2223 (fax)
lazarms@doj.state.wi.us

REINHART BOERNER VAN DEUREN S.C.

s/Daniel Kelly

Patrick J. Hodan

WI State Bar ID No. 1001233

phodan@reinhardtlaw.com

Daniel Kelly

WI State Bar ID No. 1001941

dkelly@reinhardtlaw.com

Colleen E. Fielkow

WI State Bar ID No. 1038437

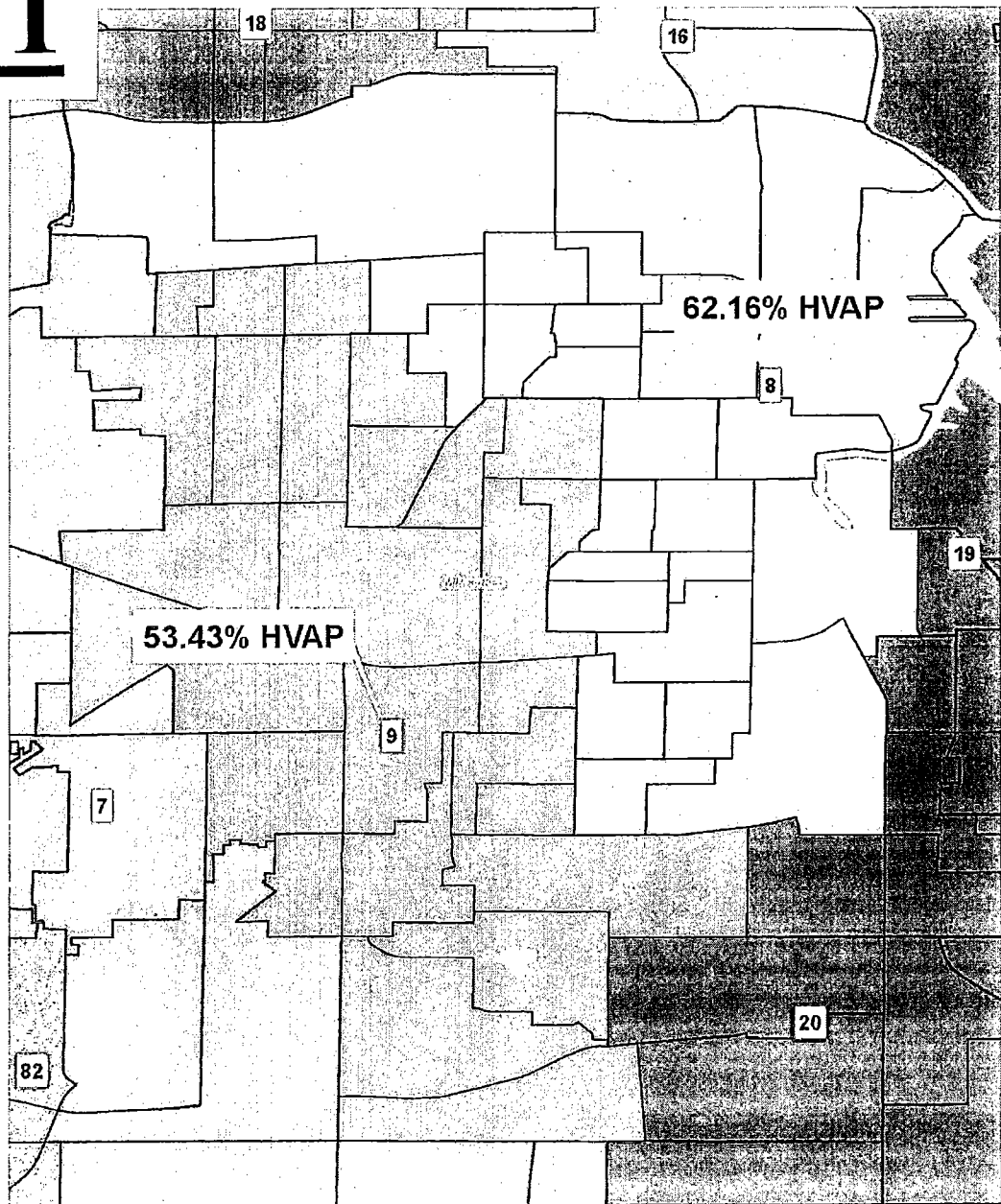
cfielkow@reinhardtlaw.com

Attorneys for Defendants

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202
Telephone: (414) 298-1000
Facsimile: (414) 298-8097

MAP 1

Zamarripa
Core
Retention
68.7%



	Ideal Pop	Proposed Population	Deviation	Percent Deviation %	HVAP	CVAP
District 8	57,444	57,333	-111	-.19%	62.16%	51.4%
District 9	57,444	57,146	-298	-.52%	52.43%	41.5%

Number of Ward Splits: 0

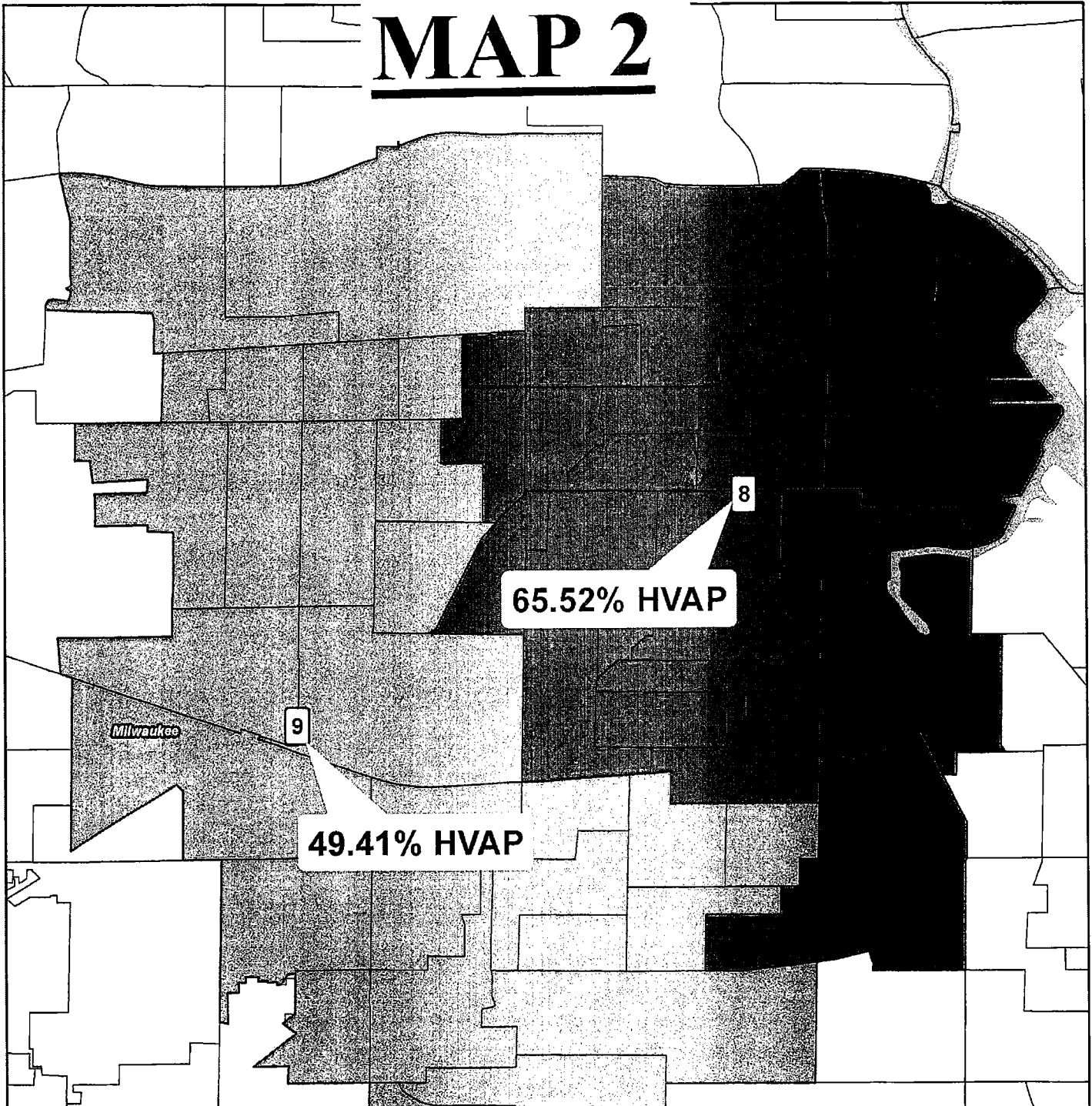
MAP 1

62% HVAP District (which is 51.4% HCVAP using Mayer's way of measuring)

A - Using noncitizenship = 35.75%								
	Total Population	Voting Age Pop. 18+	Total Latino Pop.	Latino VAP 18+	Latino Share of VAP	Non-Latino VAP	Latino CVAP ("Eligibles")	Latino Share of CVAP
District 8	57,333	37,958	38,421	23,596	62.2%	14,362	15,160	51.4%
District 9	57,146	38,681	33,976	20,279	52.4%	18,402	13,029	41.5%
B - Using noncitizenship = 42.00%								
	Total Population	Voting Age Pop. 18+	Total Latino Pop.	Latino VAP 18+	Latino Share of VAP	Non-Latino VAP	Latino CVAP ("Eligibles")	Latino Share of CVAP
District 8	57,333	37,958	38,421	23,596	62.2%	14,362	13,686	48.8%
District 9	57,146	38,681	33,976	20,279	52.4%	18,402	11,762	39.0%

Control Totals 8
Control Totals 9

MAP 2



Assembly District 8

HVAP 65.52%
 CVAP 55.0%

Ideal Population: 57,444
 Proposed Population: 57,262
 Deviation -182
 Percent Deviation: -.32%

Number of Ward Splits: 1

Assembly District 9

HVAP 49.41%
 CVAP 38.6%

Ideal Population: 57,444
 Proposed Population: 57,217
 Deviation -227
 Percent Deviation: -.40%

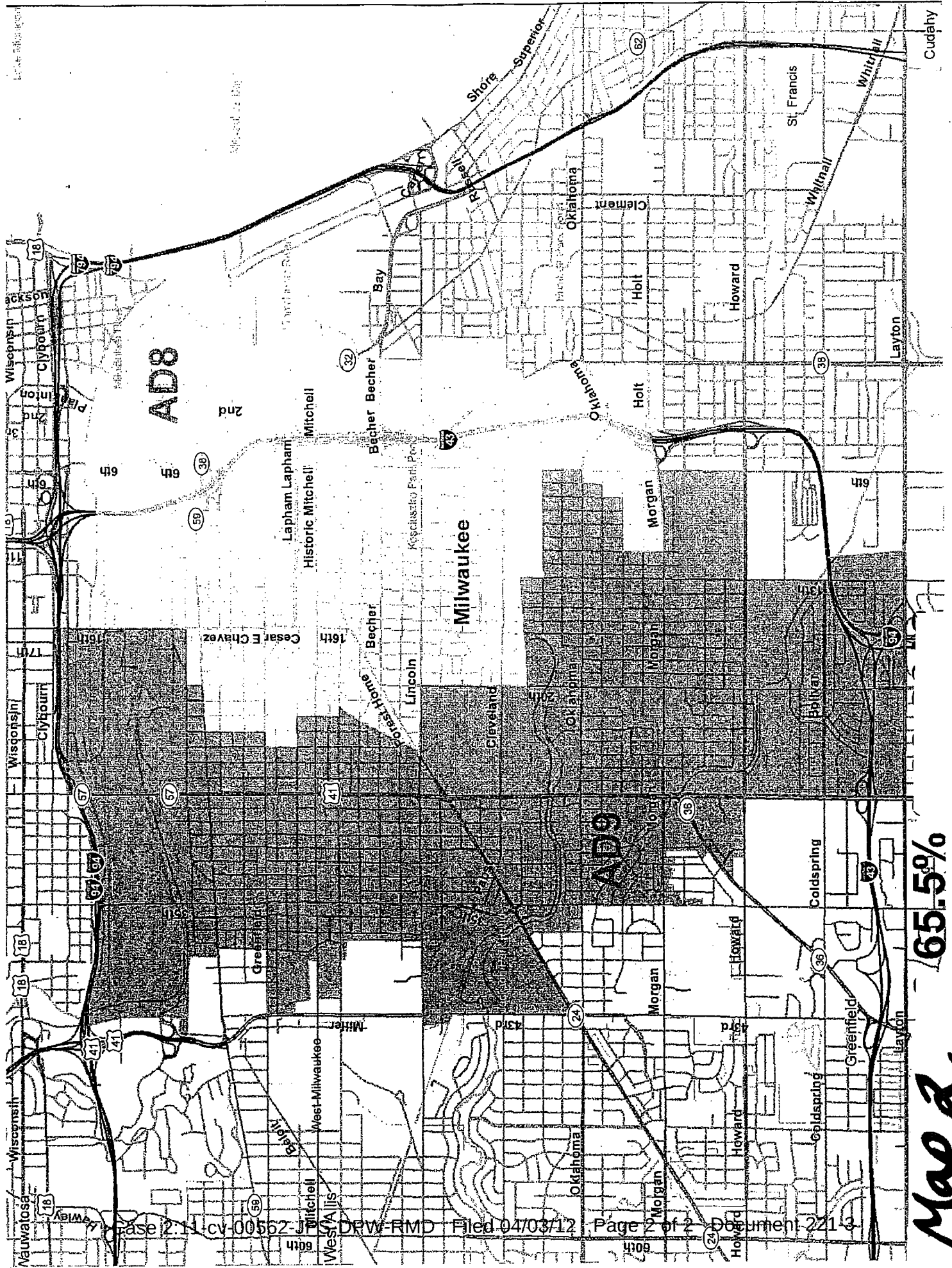
Core Retention for Assembly District 8:

70.08%

Case 2:11-cv-00562-JPS-DPW-RMD Filed 04/03/12

Page 1 of 2 Document 221-3

EXHIBIT 3



65.5%

Map 2

MAP 2

Alternative 6 (which is 55.0% HCVAP using Mayer's way of measuring)									
A - noncitizenship = 35.75%									
	Total Population	Voting Age Pop. 18+	Total Latino Pop.	Latino VAP 18+	Latino Share of VAP	Non-Latino VAP	Latino CVAP ("Eligibles")	Latino Share of CVAP	
District 8	57,262	37,277	39,977	24,425	55.52%	12,852	15,693	55.0%	
District 9	57,217	39,362	32,420	19,450	49.41%	19,912	12,497	38.6%	
B - noncitizenship = 42.00%									
	Total Population	Voting Age Pop. 18+	Total Latino Pop.	Latino VAP 18+	Latino Share of VAP	Non-Latino VAP	Latino CVAP ("Eligibles")	Latino Share of CVAP	
District 8	57,262	37,277	39,977	24,425	55.52%	12,852	14,167	52.4%	
District 9	57,217	39,362	32,420	19,450	49.41%	19,912	11,281	36.2%	

Control Totals 8
Control Totals 9

Control Totals

These numbers are identical in summary stats.XLS

Brandt, Karen J (15243)

From: ecfmaster@wied.uscourts.gov
Sent: Tuesday, April 03, 2012 3:12 PM
To: ecfmaster@wied.uscourts.gov
Subject: Activity in Case 2:11-cv-00562-JPS-DPW-RMD Baldus et al v. Brennan et al Brief (Non-Motion)

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

United States District Court

Eastern District of Wisconsin

Notice of Electronic Filing

The following transaction was entered by Lazar, Maria on 4/3/2012 at 3:11 PM CDT and filed on 4/3/2012

Case Name: Baldus et al v. Brennan et al
Case Number: 2:11-cv-00562-JPS-DPW-RMD
Filer: Thomas Barland
Michael Brennan
Thomas Cane
David G Deininger
Kevin Kennedy
Gordon Myse
Gerald Nichol
Timothy L Vocke

WARNING: CASE CLOSED on 03/22/2012

Document Number: 221

Docket Text:

BRIEF filed by All Defendants *Defendants' Brief Regarding Map Alternatives*. (Attachments: # (1) Exhibit 1 - Map 1 (2 pages) 62.16% and 53.43% HVAP, # (2) Exhibit 2 - Morrison CVAP Calculation for Map 1, # (3) Exhibit 3 - Map 2 (2 pages) 65.52% and 49.41% HVAP, # (4) Exhibit 4 - Morrison CVAP Calculation for Map 2)(Lazar, Maria)

2:11-cv-00562-JPS-DPW-RMD Notice has been electronically mailed to:

Aaron H Kastens ahkastens@michaelbest.com, mlcrimmins@michaelbest.com

Adam B Stephens astephens@milwaukee.gov

ff3e3dd4fadecaeb617f8685f19bf5d3b70372ce0866338dcd753a0df8c8]]

Document description:Exhibit 1 - Map 1 (2 pages) 62.16% and 53.43% HVAP

Original filename:

Electronic document Stamp:

[STAMP dcecfStamp_ID=1001523647 [Date=4/3/2012] [FileNumber=1866454-1]

[4edbaa41a85da05aacc2f863b4a4ac859f027241b2f5b74e7fcbc8385c45bee9b596

a933aa3f618bf094e02e6f262f7f59b59c36ebd62aaa1accc92ab90a5304]]

Document description:Exhibit 2 - Morrison CVAP Calculation for Map 1

Original filename:

Electronic document Stamp:

[STAMP dcecfStamp_ID=1001523647 [Date=4/3/2012] [FileNumber=1866454-2]

[27dcbb824f20c4f90ec1704324022feb87686720ad8a5a45bf4f8fdaec2d2157d610

22dbd67bb9bb5df268d8072e54307b6e8aabe20aee12f38a7cbe811d1bed]]

Document description:Exhibit 3 - Map 2 (2 pages) 65.52% and 49.41% HVAP

Original filename:

Electronic document Stamp:

[STAMP dcecfStamp_ID=1001523647 [Date=4/3/2012] [FileNumber=1866454-3]

[8fcd57cc31cdfdd7b23a6ad2a1f7d3a9182ff2228d710df265d3adf05cc95cbdb408

f58e50167afa47715a129879c51463e895112fee51fd7410dbf6376563e9]]

Document description:Exhibit 4 - Morrison CVAP Calculation for Map 2

Original filename:

Electronic document Stamp:

[STAMP dcecfStamp_ID=1001523647 [Date=4/3/2012] [FileNumber=1866454-4]

[594a353f425b6be06b064e45eddb596353d8d8207d84129f04a308ff3d1e670000a7

1ccd6269f130bf7f65ed371f045a4a02f348f4cdfb618be6a430b8c54d72]]